

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**UNITED STATES OF AMERICA**

**v.**

**THOMAS P. GORDON, et al.**

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**CRIMINAL ACTION NO:**

**04-CR-63 (JPF)**

**MOTION OF DEFENDANTS FREEBERY AND GORDON  
FOR AN ORDER TRANSFERRING THE CASE-FILE TO THE  
EASTERN DISTRICT OF PENNSYLVANIA**

Defendants Sherry L. Freebery and Thomas P. Gordon, through counsel, hereby move under Fed. R. Crim. P. 21(c), for an order transferring the case-file in this matter from the District of Delaware to the Eastern District of Pennsylvania. In support of this motion, they state as follows:

1. On February 1, 2005, the defendants moved under Fed. R. Crim. P. 21(a) for a transfer from the District of Delaware to the Eastern District of Pennsylvania. By order dated July 25, 2005, this Court granted their motion.

2. As of this date, the Clerk for the District of Delaware has not sent the case-file, or a copy thereof, to the Clerk for the Eastern District of Pennsylvania. The Clerk's office for the Eastern District of Pennsylvania has informed undersigned counsel that, as a result, it cannot open the case or assign it a number in the Eastern District of Pennsylvania. Counsel therefore have continued to file all submissions in the District of Delaware even though the case is pending in the Eastern District of Pennsylvania. At the same time, counsel remain uncertain about which local rules and practices should govern their pre-trial submissions, and from which jurisdiction trial subpoenas should issue.

3. Rule 21 provides: “When the court orders a transfer, the clerk must send to the transferee district the file, or a certified copy . . . .” Fed. R. Crim. P. 21(c). The case then proceeds in the transferee district “as if it had been commenced there.” 2 Charles Alan Wright, *Federal Practice and Procedure* § 346 (3d Ed. 2000) (“A transfer is not for trial only. The entire proceeding . . . [is] to be disposed of in the transferee court.”).

4. Undersigned counsel have conferred with the Clerk’s office in the District of Delaware and have been informed that the office requires an express order to transfer the case file to the Eastern District of Pennsylvania..

WHEREFORE, Ms. Freebery and Mr. Gordon respectfully request that the Court enter an order directing the Clerk for the District of Delaware to transfer the case-file in this matter to the Clerk for the Eastern District of Pennsylvania.

A proposed order is attached.

Respectfully submitted,

ZUCKERMAN SPAEDER LLP

/s/ William W. Taylor

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*Counsel for Defendant Sherry L. Freebery*

POST & SCHELL, P.C.

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*Counsel for Defendant Thomas P. Gordon*

Dated: September 7, 2005

**CERTIFICATE OF SERVICE**

I certify that, on this 7<sup>th</sup> day of September 2005, I caused a copy of the foregoing Motion Of Defendants Freebery And Gordon For An Order Transferring The Case-File To The Eastern District Of Pennsylvania to be filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record, I also certify that I caused a copy of thereof to be sent by Federal Express to:

Joseph Hurley, Esq.  
1215 King Street  
Wilmington, Delaware 19801

/s/ James A. McLaughlin

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James A. McLaughlin

John P. Fullam, Sr. J.